A.F.R.

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HIGH COURT OF CHHATTISGARH, BILASPUR

M.A.(C) No. 666 of 2007

APPELLANT: The Oriental Insurance Company.

- Versus -

RESPONDENTS: Shivnath and others.

ORDER FOR CONSIDERATION

Sd/-

JUDGE
10 -8-2007

HON'BLE MR. SUNIL KUMAR SINHA, J. — I agree.

Sd/-
Sunil Kumar Sinha
Judge

POST FOR ORDER ON 16 - 8 -2007

Sd/-
L.C. Bhadoo
Judge

(56)

HIGH COURT OF CHHATTISGARH, BILASPUR

M.A.(C) No. 666 of 2007

APPELLANT: DEFENDANT NO.3		The Oriental Insurance Company, Branch Office Ambedkar Chow, Manendragarh Road, Ambikapur, Distt. Surguja (C.G.) through its Divisional Manager, Divisional Office – Korba (C.G.)
	- Versus -	
RESPONDENT: CLAIMANT NO.1	1.	Shivnath, aged about 48 years, son of Shri Ram Prasad.
RESPONDENT: CLAIMANT NO.2	2.	Seetapati, wife of Shivnath Sahu, aged about 40 years,
RESPONDENT: CLAIMANT NO.3	3.	Aasha Kumari, widow of Late Rajkumar Sahu, aged about 24 years,
RESPONDENT: CLAIMANT NO.4	4.	Minor Kumari Priyanka, daughter of Late Rajkumar Sahu, aged about 03 years,
RESPONDENT: CLAIMANT NO.5	5.	Minor Vivek Kumar, aged about 07 months, son of late Rajkumar, Respondents No.1 to 5 R/o Gram Madneshwarpur, Thana Ramanujnarar, Surajpur, District Sarguja. Respodnent No.4 and 5 (Minor) through their natural guardian – mother, Ashakumari, widow of Late Rajkumar Sahu, aged about 24 years,
RESPONDENT: DEFENDANT NO.1	6.	Murari Lal Sahu, aged about 30 years, son of Shri Sonayee Ram Sahu, Occupation – business (vehicle owner), resident of Manpur, Surajpur, P.S. and Tah. Surajpur, Distt. Surguja (C.G.)
RESPONDENT: DEFENDANT NO.2	7.	Santosh Kumar Jayaswal, aged about 25 years, son of

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Shri Manikchand Jayaswal, occupation – driver, resident of village Dedari (Salka) P.S. and Tahsil Surajpur, Distt. Surguja (C.G.)

(Miscellaneous Appeal under Section 173 of the M.V. Act, 1988)

Present:

Shri Prashant Jaiswal, Sr. Advocate

With Shri Ali Asgar, Advocate: For the appellant.

Shri Sushil Dubey, Advocate: For respondent No.6.

CORAM: - HON'BLE SHRI L.C. BHADOO AND

HON'BLE SHRI SUNIL KUMAR SINHA, JJ.

ORDER

(Passed on 14th August, 2007)

The following order of the Court was passed by ***L.C. Bhadoo, J***: -

1. The Oriental Insurance Company, insurer, has preferred this miscellaneous appeal challenging the legality and correctness of the award dated 31st January, 2007 passed by the 3rd Additional Motor Accidents Claims Tribunal (FTC) Surajpur, in Claim case No.14/2006 whereby learned Tribunal has passed an award to the tune of Rs.4,30,000/- against the appellant and respondent No.6 jointly & severally. It was further directed that the claimants shall be entitled for interest @ 6% from the date of filing of the claim petition i.e. 8-12-2005.

2. The matter was listed for hearing on stay application. As small point is involved in this case, therefore, it was decided to dispose of this appeal finally at the admission stage itself.

3. Brief facts of the case,necessary for the disposal of this appeal,are that on 8-11-2005 Raj Kumar Sahu (since deceased) was traveling in the offending vehicle of Jai Bhavani Bus Service bearing registration

No.CG10-ZA/0128 which was plying from Surajpur to Devnagar. The bus was stopped in Devnagar in front of Mistri shop. On stopping of the bus, when Raj Kumar Sahu (since deceased) was alighting from the bus, by the time he put his one foot down on the earth, all of a sudden, bus driver Santosh Kumar Jaiswal in a rash and negligent manner moved the bus, as a result of which Raj Kumar Sahu fell down from the bus. He was crushed under the rear wheel of the bus. He sustained injuries. He was taken to the Community Health Centre, Jainagar where the doctor advised them to take Raj Kumar to Ambikapur. He was taken to the Mission Hospital, Ambikapur. During the treatment, he succumbed to the injuries in the night.

4. As per the claimants, Raj Kumar Sahu was aged about 26 years and was carpenter by profession. He also used to do agricultural work. The claimants claimed that Raj Kumar Sahu was earning Rs.4000/- per month. The claim petition was preferred by the mother, father, widow and two minor children against the owner of the bus, driver and the Insurance Company. Apart from other objections, an objection was raised by the Insurance Company/appellant herein that offending vehicle was insured as commercial passenger vehicle with effect from 8-2-2005 to 7-2-2006 for 18 passengers, only driver having valid and effective licence was entitled to drive the vehicle. On the date of the accident, the vehicle was not having valid permit and fitness certificate. Respondent No.2 driver was not holding valid and effective licence to drive commercial vehicle. Therefore, respondents No.1 & 2 in the claim petition i.e. owner and driver are responsible for payment of compensation amount.

5. The Insurance Company has preferred this appeal mainly on the ground that since at the time of accident Santosh Kumar Jaiswal was driving

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offending vehicle without valid and effective licence to drive commercial vehicle, therefore, on account of breach of policy the Insurance Company is not liable to pay compensation. Learned Tribunal has committed error in holding the appellant responsible for making payment of the compensation.

6. Shri Prashant Jaiswal, learned Sr. Advocate representing the Insurance Company, raised only this limited point that driver was not holding valid and effective licnece, there was breach of policy, as such, the Company is not responsible for making payment of compensation amount.

7. On the other hand, Shri Sushil Dubey, learned counsel for respondent No.6, argued that Insurance Company has not adduced any evidence by producing RTO record or an officer of the RTO Office establishing that driver was not holding valid and effective licence as also that the owner deliberately permitted the driver to drive vehicle without holding valid and effective licence, that was within his knowledge. While placing reliance on **Swaran Singh**'s case as also on **Ishwar Chandra & Ors. V. The Oriental Insurance Co. Ltd. & Ors. {2007 (2) CCC 225 (SC)}** he further argued that accident did not occur on account of the fact that driver was not holding valid licence.

8. Having heard learned counsel for the parties, we have perused the record. In the matter of **National Insurance Co. Ltd., V. Swaran Singh and others**[1] the Apex Court held that: -

> "In claims for compensation for accidents, various kinds of breaches with regard to the conditions of driving licences arise for consideration before the Tribunal. A persons possessing a driving licence for 'motor cycle without gear', for which he has no

1. 2004 (1) T.A.C. 321 (S.C.)

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licence. Cases may also arise where a holder of driving licence for 'light motor vehicle' is found to be driving a 'maxi-cab', 'motor-cab' or 'omnibus' for which he has no licence. In each case on evidence led before the Tribunal, a decision has to be taken whether the fact of the driver possessing licence for one type of vehicle but found driving another type of vehicle, was the main or contributory cause of accident. If on facts, it is found that accident was caused solely because of some other unforeseen or intervening causes like mechanical failures and similar other causes having no nexus with driver not possessing requisite type of licence, the insurer will not be allowed to avoid its liability merely for technical breach of conditions concerning driving licence."

9. Considering **Swaran Singh**'s case (Supra) the Apex Court in the matter of **National Insurance Co. Ltd., V. Kusum Rai and others** reported in **2006 ACJ 1336** held that: -

"Driver had licence to drive light motor vehicle but he was driving a jeep which was being plied as a taxi, a commercial vehicle – Whether there was breach of conditions of contract of insurance by the insured and the insurance company is exempted from liability – Held: yes; driver did not possess a valid licence to drive a commercial vehicle; insurance company may recover the amount paid from the owner by initiating proceedings before the executing court."

10. Allegations in this matter were that taxi was being driven rashly and negligently by Ram Lal, driver. The taxi was insured with National Insurance Company. One of the issues raised during the proceedings whether driver of the said jeep was having valid and effective licence, another question was raised as to whether said Ram Lal was driving the said vehicle. The Court held that it was admitted that driver was driving commercial vehicle, he was required to hold an appropriate licence.

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Ram Lal was holder of a licence to drive a light motor vehicle only. He did not possess any licence to drive a commercial vehicle. Evidently, therefore, there was a breach of condition of the contract of insurance. The appellant, therefore, could raise the said defence. In a case of this nature, therefore, the owner of a vehicle cannot contend that he has no liability to verify the fact as to whether the driver of the vehicle possessed a valid licence or not.

11. In the matter of **Malla Prakasarao V. Malla Janaki** reported in **(2004) 3 SCC 343** the Apex Court held that:

> "It is not disputed that the driving licence of the driver of the vehicle had expired on 20.11.1982 and the driver did not apply for renewal within 30 days of the expiry of the said licence, as required under section 11 of the *Motor Vehicles Act*, 1939. It is also not disputed that the driver of the vehicle did not have driving licence when the accident took place. According to the terms of the contract, the insurance company has no liability to pay any compensation where an accident takes place by a vehicle driven by a driver without a driving licence. In that view of the matter, we do not find any merit in the appeal."

12. In the matter of **Swaran Singh**'s case (Supra) the Apex Court held that:-

> "The liability of the insurance company vis-à-vis the owner would depend upon several factors. The owner would be liable for payment of compensation in a case where the driver was not having a licence at all. It was the obligation on the part of the owner to take adequate care to see that the driver had an appropriate licence to drive the vehicle."

13. In the present case also defence taken by the appellant Insurance Company was that driver Santosh Kumar Jaiswal was driving the bus, commercial passenger vehicle, without valid and effective licence, as he

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was having licence only to drive light motor vehicle. He was not authorized to drive the commercial vehicle. The Insurance Company has examined its Development Officer A.P. Gupta. He has stated that the offending vehicle bearing registration No.CG10-ZA/0128 was insured with the Oriental Insurance Company, Ambikapur with effect from 8-2-2005 to 7-2-2006 as passenger commercial vehicle. Certified copy of the insurance policy is Ex.D/4. At B to B portion of the policy it has been mentioned that only driver having valid and effective licence can drive the vehicle. Certified copy is Ex.D/5. After receiving photocopy of the driving licence, investigator Nand Kishore Dubey got verified licence from the RTO office, Ambikapur. His letter is Ex.D/6. RTO certificate is Ex.D/7. As per Ex.D/6 & D/7, driver was entitled to drive the light motor vehicle. He was not entitled to drive the bus, commercial vehicle. Driver Santosh Kumar Jaiswal was not legally authorized to drive the vehicle No.CG10-ZA/0128. Therefore, the insurance company is not liable to pay compensation. Owner of the vehicle Murarilal Sahu has examined himself. He has admitted that the offending vehicle i.e. mini bus was operating between Surajpur to Sirmina as passenger vehicle. Insurance policy is Ex.D/1. Photocopy is Ex.D/1-C. Registration of the vehicle is Ex.D/2. Photocopy is Ex.D/2-C. Driving licence is Ex.D/3. Copy of the driving licence is Ex.D/3-C. In cross-examination, he has stated that he is the owner of 3 buses. It is correct that he knows English. It is correct that in the insurance policy it has been written that bus shall be operated and driven in accordance with the provisions of the MV Act. It is correct that in the driving licence Ex.D/3 RTO has written that for LMV i.e. Light Motor Vehicles. 407 bus is a light motor vehicle. It is incorrect to say that in the licence of driver for driving passenger bus the RTO is required to make the entry as PSV, PSV is given only on the basis of experience. It is incorrect to say that the driver was not having experience of driving.

(A3)

He was operating the bus for the last 5 years. It is incorrect that bus was being driven in violation of the insurance policy.

14. Perusal of the certificate-cum-policy schedule Ex.D/4 shows that against the policy type it has been written that bus for carrying commercial vehicle. Ex.D/3-C photocopy of the driving licence of Santosh Kumar Jaiswal shows that it was only for LMV. There is no endorsement on the licence that he was entitled to drive commercial vehicle. Admittedly, offending vehicle was commercial vehicle. It was insured as passenger carrying commercial vehicle. It was insured for 18 passengers as per the policy. Admittedly, driver Santosh Kumar at the time of driving of the vehicle was holding the licence only for light motor vehicle, there was no endorsement on the licence by RTO that he was entitled to drive commercial light motor vehicle i.e. passenger bus, hence it was within the knowledge of the owner of the bus. Therefore, admittedly, driver of the offending vehicle was not holding valid and effective licence, that was breach of the policy as contemplated under Section 149 (2) of the MV Act, 1988.

15. Now, coming to the point, as per the observation of the Apex Court in the matter of **Swaran Singh**'s case (Supra) that in each case on evidence led before the Tribunal, a decision has to be taken whether the fact of the driver possessing licence for one type of vehicle but found driving another type of vehicle, was the main or contributory cause of accident. If on facts, it is found that accident was caused solely because of some other unforeseen or intervening causes like mechanical failures and similar other causes having no nexus with driver not possessing requisite type of licence, the insurer will not be allowed to avoid its liability merely for technical breach of conditions concerning driving licence. The above **Swaran Singh**'s case (Supra) has also been relied upon in the case of

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Ishwar Chandra & Ors. (Supra) cited by learned counsel for the respondent No.6.

16. In the present case, neither driver nor conductor has been examined to rebut the claimants' case that the accident took place on account of rash and negligent driving of driver Santosh Kumar Jaiswal because as per the claimants' case when the bus was stopped, Raj Kumar was asked to alight, by the time Raj Kumar put his one foot on the ground, the driver moved the bus in a rash and negligent manner, Raj Kumar fell down and crushed under the rear tyre. Witness No.3 namely, Rajendra Prasad has categorically stated that at the time of the accident he was sitting at a distance of 20 meters on the shop of his brother. After hearing commotion he reached near bus. Deceased Raj Kumar was alighting from the bus. The accident occurred on account of the fact that the driver moved the bus. No evidence has been led on behalf of the owner of the bus or driver to rebut above evidence. There is no evidence of the owner or driver of the bus to show that accident was caused solely because of some other unforeseen or intervening causes like mechanical failures and similar other causes having no nexus with driver not possessing requisite type of licence. Therefore, it is established that the accident occurred on account of rash and negligent driving of driver Santosh Kumar Jaiswal. Therefore, finding of the Tribunal that insurance company is liable to pay compensation cannot be sustained for the foregoing reasons. The appellant insurance company cannot be held liable to pay compensation. For this, we are fortified in our view by the judgment of the Apex Court in the matter of **Kusum Rai** (Supra).

17. The claimants are from poor background. They have also suffered mental agony. In the circumstances, it may not be appropriate to force them to recover the amount from the owner of the vehicle. Therefore,

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the appellant Insurance Company is directed to pay compensation amount to the claimants in terms of the impugned award, thereafter, the Insurance Company can recover the amount from the owner of the vehicle, in accordance with law.

18. Accordingly, the appeal is allowed in the aforesaid manner. Cost is made easy.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Sunil Kumar Sinha
Judge

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